

## REMARKS

Reconsideration of the above referenced application is hereby requested. Claims 1-25 remain pending in the present application.

### 35 U.S.C. §103(a) Rejection of Claims 1-3, 5-8, and 22-25

#### Claims 1-3 and 5-8

The Examiner has rejected claims 1-3 and 5-8, under 35 U.S.C. § 103(a) as being unpatentable over Zumbuhl in view of Whetten et al. The Examiner stated that Zumbuhl teaches the claimed closure, but is silent in regards to the action of the sealing gasket. The Examiner further stated that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggested that it would have been obvious to one of ordinary skill in the art to combine the teaching of Whetten to Zumbuhl.

Applicant's attorney respectfully traverses the above rejection. The Examiner has failed to establish a *prima facie* case for obviousness as required in an obviousness rejection. MPEP 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner failed to demonstrate that the cited references, alone or in combination, teach or suggest every limitation of the claimed invention.

Claim 1 provides for a closure for maintaining pressure against a seal affixed to a container lip as the sealed container is exposed to relatively high temperature and pressure conditions. What is more, claim 1 provides a cap having a liner that has the capability of maintaining a positive pressure against the cap and the seal. The claimed limitation is directed toward solving the problems of process water entering and/or product exiting a sealed container, through gaps or pinholes in the seal, when the sealed container is subjected to a retort process.

The invention contemplated in Zumbuhl teaches a tab construction for closures having tamper evident rings. The reference fails to teach or suggest a closure having both a liner and seal. In fact, the Zumbuhl reference merely states that the closure therein only has an optional sealing gasket. See col. 4, lin. 15-16. As can be expected from its lack of teaching of a liner *and* seal combination, Zumbuhl also fails to teach or suggest that a liner can be used to provide positive pressure upon a seal affixed to the lip of a container. Consequently, Zumbuhl does not teach or suggest a liner being used in combination with a seal or a liner to provide positive pressure upon a seal affixed to the lip of a container, as claimed in claim 1.

The Whetten reference also fails to teach or suggest the claimed structure of a closure having both a seal and a liner alone or in combination with Zumbuhl. The Whetten reference merely teaches gasket composition. What is more, the Whetten reference fails to teach or suggest the claimed invention wherein the liner provides positive pressure against a seal affixed to a container. The reference discloses that the gaskets claimed therein are used for compression sealing containers, particularly liquid containers. See col. 1, lin. 42-44. Therefore, it is apparent that Whetten teaches a gasket

for sealing the container itself and not for providing pressure against a seal affixed to a container lip. Whetten fails to teach or suggest the liner and seal combination claimed in the instant application or that the liner is used to maintain pressure on a seal affixed to a container while said container is exposed to relatively high temperature and pressure conditions.

Therefore, the cited references, alone or in combination, fail to teach all the limitations in claim 1 of the instant invention. Consequently, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner further rejected claims 2-3 and 5-8 which depend from claim 1. As discussed above, the Examiner has failed to indicate where each element of claim 1 is taught or suggested in the cited references. Since claims 2-3 and 5-8 depend from claim 1, Applicant's attorney feels these claims are also not taught by the references and, consequently, are in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **Claims 22-23**

The Examiner has further rejected claims 22-23, under 35 U.S.C. § 103(a) as being unpatentable over Zumbuhl in view of Whetten. The Examiner stated that Zumbuhl teaches the claimed closure, but is silent in regards to the action of the sealing gasket. The Examiner further stated that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggested that it would have been obvious to one of ordinary skill in the art to combine

the teaching of Whetten to Zumbuhl. Applicant's attorney respectfully traverses the Examiner on this ground for rejection.

Claim 22 claims a closure having a liner and a seal and further requires that the liner is capable of sandwiching a seal against a container lip at a pressure sufficient to retain said seal against said lip when said sealed container is subjected to retort processing conditions. Whetten and Zumbuhl, alone or in combination, as discussed above in the argument traversing the Examiner's rejection of claim 1, fail to teach or suggest the liner and seal combination or that the liner is used to sandwich the seal against the container lip at a pressure sufficient to retain said seal against said lip while said container is exposed to retort processing conditions. Therefore, akin to the argument for allowing claim 1, the cited references fail to teach or suggest every limitation of claim 22. Consequently, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner has further rejected claim 23 which depends from claim 22. As discussed above, the Examiner has failed to indicate where each element of claim 22 is taught or suggested in the cited references. Since claim 23 depends from claim 22, Applicant's attorney asserts that it is nonobvious and in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **Claims 24-25**

The Examiner rejected claims 24-25, under 35 U.S.C. § 103(a) as being unpatentable over Zumbuhl in view of Whetten. The Examiner stated that Zumbuhl

teaches the claimed closure, but is silent in regards to the action of the sealing gasket. The Examiner further stated that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggested that it would have been obvious to one of ordinary skill in the art to combine the teaching of Whetten to Zumbuhl. Applicant's attorney respectfully traverses the Examiner on this ground for rejection.

The cited references do not teach or suggest every limitation of claim 24. Claim 24 requires a closure with a liner and a seal and further claims that the liner is capable of sandwiching the seal against the container lip and capable of compression and recovery sufficient to allow said liner to maintain a positive pressure against said seal upon exposure to elevated temperatures, elevated pressures, or a combination of elevated temperature and elevated pressure. Whetten and Zumbuhl, alone or in combination, as discussed above in the argument traversing the Examiner's rejection of claim 1, fail to teach or suggest the liner and seal combination or that the liner is used to sandwich the seal against the container lip at a pressure sufficient to retain said seal against said lip while said container is exposed to retort processing conditions. Therefore, akin to the argument for allowing claim 1, the cited references do not teach or suggest every limitation of claim 24. Consequently, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner has rejected claim 25 which depends directly from claim 24. As shown above, the Examiner has failed to indicate where each element of claim 24 is

taught or suggested in the cited references. Since claim 25 depends from claim 24, Applicant's attorney asserts that it is nonobvious and in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **35 U.S.C. §103(a) Rejection of Claim 4**

The Examiner has rejected claim 4 under 35 U.S.C. §103(a) as being unpatentable over Zumbuhl in view of Whetten as applied to claim 1, and further in view of Carr et al. The Examiner stated that Zumbuhl as modified teaches the claimed closure except for a sealing layer between the liner and the interior cap surface. The Examiner further stated that Carr teaches a sealing layer between the liner and the interior cap surface. The Examiner ultimately suggested that it would have been obvious to one of ordinary skill in the art to combine the teaching of Carr to Zumbuhl. Applicant's attorney respectfully traverses this ground of rejection.

Claim 4 provides a layer of bonding material between a liner and the top interior surface of a cap. Contrary to the Examiner's statement, Carr does not teach or suggest this limitation. In fact, Carr teaches a sealing layer between the seal (i.e., foil cap) and the top of the neck of the container. See col. 5, lin. 6-16.

Further, Carr does not fulfill the Zumbuhl and Whetten references' lack of teaching discussed above. Carr teaches a tamper-evident closure and further discloses a sealing assembly comprised of a cardboard disc and a metal or foil disc. See col. 5, line. 3-5. This disclosure does not teach or suggest the structure of a liner and seal combination claimed in the instant application, which, as mentioned, is clearly missing from the Zumbuhl and Whetten references.

Consequently, Applicant's attorney asserts that the Examiner has failed to indicate where each element of claim 1 is taught or suggested in the cited references. Since claim 4 depends from claim 1 and includes all of the limitations of claim 1, the Examiner has not made a prima facie showing of obviousness for claim 4. Applicant's attorney asserts that claim 1 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

**35 U.S.C. §103(a) Rejection of Claim 9**

The Examiner has rejected claim 9 under 35 U.S.C. §103(a) as being unpatentable over Zumbuhl in view of Whetten as applied to claim 1, and further in view of Kelly. Applicant's attorney respectfully traverses this ground of rejection.

Kelly does not fulfill the Zumbuhl and Whetten references' lack of teaching discussed above. Kelly teaches a vented beverage closure and discloses only an optional liner. See col. 1, ln. 16-17. This disclosure does not teach or suggest the structure of a liner and seal combination claimed in the instant application, which is missing from the Zumbuhl and Whetten references.

Applicant's attorney asserts that the Examiner has failed to indicate where each element of claim 1 is taught or suggested in the cited references. Since claim 9 depends from claim 1 and includes all of the limitations of claim 1, the Examiner has not made a prima facie showing of obviousness for claim 9. Applicant's attorney asserts that claim 1 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

**35 U.S.C. §103(a) Rejection of Claims 10-18, 20, and 22-25**

**Claims 10-18 and 20**

The Examiner rejected claims 10-18 and 20, under 35 U.S.C. § 103(a) as being unpatentable over Carr in view of Whetten. The Examiner stated that Carr teaches a closure with a tamper-evident band having a continuous bead under a groove and also having threads with an upper edge angle less than about 45 degrees. The Examiner further stated that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggested that it would have been obvious to one of ordinary skill in the art to combine the teaching of Whetten to Carr. Applicant's attorney respectfully traverses this ground of rejection.

The Examiner has failed to indicate where each element claimed is taught or suggested in the cited references. Claim 10 provides a closure for a sealed container wherein the sealed container is sterilized using a retort process and said closure having a liner that maintains a positive pressure against said seal. Similar to the arguments above, Whetten, although teaching a gasket for sealing containers, does not teach the structure of a liner and seal combination. Moreover, Whetten fails to teach a liner maintaining a positive pressure on a seal of a container wherein said container is subjected to a retort process. As to the Carr reference, the specification merely teaches a tamper-evident closure and provides that such closure can have a sealing assembly comprised of a cardboard disc and a metal or foil disc. See col. 5, lin. 3-5. The reference is silent to the claimed combination.



The claimed invention provides a liner and seal combination and such invention is directed toward providing a mean for which to prevent seal separation or leakage when the sealed container is subjected to a retort process. Carr does not teach the liner and seal combination nor does it teach a liner maintaining a positive pressure on a seal when the container is subjected to a retort process, as in claim 10. Therefore, the cited references, alone or in combination, fail to provide all the limitations in claim 10 of the instant invention. Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner rejected claims 11-18 and 20 which depend from claim 10. As discussed above, the Examiner has failed to indicate where each element of claim 10 is taught or suggested in the cited references. Since claims 11-18 and 20 depend from claim 10, Applicant's attorney feels these claims are also not taught by the references and, consequently, are in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **Claims 22-23**

The Examiner rejected claims 22-23, under 35 U.S.C. § 103(a) as being unpatentable over Carr in view of Whetten. The Examiner stated that Carr teaches a closure with a tamper-evident band having a continuous bead under a groove and also having threads with an upper edge angle less than about 45 degrees. The Examiner further stated that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggested that it would

have been obvious to one of ordinary skill in the art to combine the teaching of Whetten to Carr.

Claim 22 requires a closure having both a liner and a seal and also claims that the liner is capable of sandwiching the seal against the container lip at a pressure sufficient to retain said seal against said lip when said sealed container is subjected to retort processing conditions. Neither Whetten nor Carr, alone or in combination, as previously discussed in the argument traversing the Examiner's rejection of claim 10, teach or suggest the element of a liner and seal combination or that the liner maintains positive pressure on the seal when the container is subjected to a retort process. Therefore, akin to the argument for allowing claim 10, the cited references do not teach or suggest every limitation of claim 22.

Consequently, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner rejected claim 23 which depends directly from claim 22. As discussed above, the Examiner has failed to indicate where each element of claim 22 is taught or suggested in the cited references. Since claim 23 depends from claim 22, Applicant's attorney feels this claim is also not taught by the references and, consequently, is in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **Claims 24-25**

The Examiner rejects claims 24-25, under 35 U.S.C. § 103(a) as being unpatentable over Carr in view of Whetten. The Examiner states that Carr teaches a

closure with a tamper-evident band having a continuous bead under a groove and also having threads with an upper edge angle less than about 45 degrees. The Examiner further states that Whetten teaches that it is known to provide a closure liner for hot-filling a container and that such a liner is inherently known to compress and recover at high temperature and/or high pressure. The Examiner ultimately suggests that it would have been obvious to one of ordinary skill in the art to combine the teaching of Whetten to Carr. Applicant's attorney respectfully traverses this ground for rejection.

As stated previously, claim 24 requires a closure with a liner and a seal and further claims that the liner is capable of sandwiching the seal against the container lip and capable of compression and recovery sufficient to allow said liner to maintain a positive pressure against said seal upon exposure to elevated temperatures, elevated pressures, or a combination of elevated temperature and elevated pressure. Whetten and Carr, alone or in combination, as discussed above in the argument traversing the Examiner's rejection of claim 10, fail to teach or suggest a liner and seal combination or that the liner maintains positive pressure on the seal upon exposure to elevated temperatures, elevated pressures, or a combination of elevated temperature and elevated pressure. Therefore, akin to the argument for allowing claim 10, the Examiner has not shown all the limitations of claim 24.

Consequently, Applicant's attorney asserts that the Examiner has not made a prima facie showing of obviousness and respectfully requests that this ground for rejection be withdrawn.

The Examiner rejects claim 25 which depends directly from claim 24. As discussed above, the Examiner has failed to indicate where each element of claim 24 is

taught or suggested in the cited references. Since claim 25 depends from claim 24, Applicant's attorney feels this claim is also not taught by the references and, consequently, is in condition for allowance. Applicant's attorney respectfully requests that the Examiner withdraw this ground of rejection.

#### **35 U.S.C. §103(a) Rejection of Claim 19**

The Examiner has rejected claim 19 under 35 U.S.C. §103(a) as being unpatentable over Carr in view of Whetten as applied to claim 10, and further in view of Zumbuhl. Applicant's attorney respectfully traverses this ground of rejection.

Applicant's attorney asserts, as shown above, that the Examiner has failed to indicate where each element of claim 10 is taught or suggested in the cited references. Since claim 19 depends from claim 10 and, therefore, includes all of the limitations of claim 10, the Examiner has not made a prima facie showing of obviousness for claim 19. Applicant's attorney asserts that claim 19 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

#### **35 U.S.C. §103(a) Rejection of Claim 21**

The Examiner has rejected claim 21 under 35 U.S.C. §103(a) as being unpatentable over Carr in view of Whetten as applied to claim 11, and further in view of Kelly. Applicant's attorney respectfully traverses this ground of rejection.

Applicant's attorney asserts, as shown above, that the Examiner has failed to indicate where each element of claim 10 is taught or suggested in the cited references. Since claim 21 depends from claim 10 and, therefore, includes all of the limitations of claim 10, the Examiner has not made a prima facie showing of obviousness for claim 21.

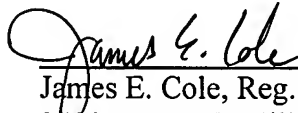
Applicant's attorney asserts that claim 21 is in condition for allowance and respectfully requests this ground of rejection be withdrawn.

**Conclusion**

Applicant urges that the instant application is in condition for allowance. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a collect call at (502) 584-1135 to discuss such remaining issues.

Respectfully submitted,

**MIDDLETON REUTLINGER**



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